

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

LOTT HUSBAND

APPELLANT

VS.

DOCKET NO. 16-034

MISSISSIPPI DEPARTMENT OF TRANSPORTATION

RESPONDENT

FILED

FEB 21 2017

EMPLOYEE APPEALS BOARD

ORDER

This cause came on for hearing on January 9, 2017 in Ocean Springs, Mississippi. The appellant, Lott Husband (Husband) appeared *pro se*, and attorney, Brock Campbell represented the Mississippi Department of Transportation (MDOT).

SUMMARY

Husband was employed for approximately 3.5 years with MDOT as Weight Enforcement Officer II. She found a notebook belonging to Captain Edins containing information about an investigation of other officers. Husband took pictures of pages from the notebook and transmitted it to one of the officers under investigation. When it was discovered what she had done, Husband lied to her superiors. She eventually confessed the lie. She was terminated for making false statements. She appeals her termination. For the following reason, the decision of MDOT is sustained and shall not be disturbed.

FINDINGS

On Monday, October 10, 2016, Husband found a notebook in the office of the Eastbound Orange Grove inspection station. Upon finding the notebook, Husband

called Sgt. Kelly Arrington to ask him if the notebook belong to him. Husband also texted Sgt. Arrington pictures of six (6) pages from the notebook. Husband was contacted by Maj. Michael Foreman about finding the notebook. In her conversation with Maj. Foreman, Husband stated that she had not found a notebook. Maj. Foreman asked Husband numerous times if she had found a notebook, and Husband repeatedly stated that she had not. Husband was again contacted on Monday, October 10, 2016, by Maj. Foreman, and was again asked about the notebook. Husband told Maj. Foreman that she had found a notebook on the counter that morning, but it had since been removed. Husband also told Maj. Foreman that she did not know what happened to the notebook. Maj. Foreman directed Husband to write a detailed statement concerning her actions. In her written statement on October 10, 2016, Husband failed to mention that she had sent Sgt. Arrington pictures of pages from the notebook. She also represented in the statement that she did not know who the notebook belong to. Husband was interviewed at MDOT Enforcement Headquarters by Human Resources personnel, Maj. Foreman, Capt. Edins, and Lieut. Duberstein on Tuesday, October 11, 2016. During her interview, Husband admitted that her statement in the initial conversation with Maj. Foreman was false. Husband also admitted that her statements in her second October 10, 2016 conversation with Maj. Foreman were false. Husband also admitted that her written statement to Maj. Foreman on October 10, 2016 was false. Husband admitted that she knew that the notebook belonged to Capt. Edins and had misrepresented this fact to Maj. Foreman.

Husband appeals her termination. She does not allege any form of discrimination. Her sole basis of the appeal is that she has never had any disciplinary actions prior to this nor has she had any documented poor performance evaluations placed in her file. And she also pleads that she is a single mother who is currently without employment. Despite her pleas for leniency, Husband concedes that she is in violation of the following offenses:

Group 3, Number Six offense of falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents, AND, a Group 3, Number 14 offense of an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employment in the assigned position could constitute negligence in regard to the agency's duties to the public or to other state employees, AND a Group 3, Number 19 offense of willful violation of MSPB policies and procedures, including, but not limited to: creating or participating in discrimination in the workplace or hostile work environment; refusing to cooperate and/or giving a false statement in an investigation of possible violation of MSPB policies and procedures, as stipulated in the Mississippi State Employee Handbook, Chapter 7 (§7.1).

OPINION

Husband has the burden of proof in this matter. See, Mississippi State Personnel Board Policy and Procedures Manual, effective date 7/1/2016, Chapter 10, Section 20.B. Also, see *Richmond v. Mississippi Department of Human*


Services, 745 So.2d 254 (Miss. 1999). In *Richmond*, the court stated: the statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. Rule 17, Administrative Rules of the Mississippi Employee Appeals Board; Miss. Code Ann. § 25-9-127 (1972). ... This is not mere semantics. Under our scheme, in a nutshell, ties go to the appointing authority. That is, unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned. *Mississippi Employment Security Commission v. Collins*, 629 So. 2d 576, 580 (Miss. 1993); Miss. Code Ann. § 25-9-127. More directly, Miss. Code Ann. § 25-9-127(1) provides that “any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting compensation or employment status are not true or are not sufficient grounds for the action taken.” This burden of proof is also in the MSPB Policy and Procedure Manual in Rule 10.7.20 and provides that the “appealing party shall have the burden of proving that the reasons stated in the notice of the agency’s final decision are not true or are not sufficient grounds for the action taken.” Further, Rule 10.7.24 provides that “If the responding agency has acted in accordance with the published policies, rules and regulations of MSPB, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the order

shall not alter the action taken by the agency. “

Having considered all of the testimony of the witnesses in this case, having considered all the exhibits introduced into evidence, having evaluated the credibility of all witnesses, and after having drawn certain inferences from the testimony of witnesses this tribunal finds as a fact that Husband did not meet her burden of proof. She offered no proof that MDOT's decision was not justified. She concedes her conduct and concedes that her conduct constitute three separate Group Three offense, one of which warrants termination. Husband's appeal to reduce her punishment is not well taken. Her termination will stand.

For these reasons, Husband's appeal is dismissed with prejudice.

SO ORDERED, this the 21st day of February, 2017.


JEFFREY G. PIERCE,
Hearing Officer